

## REMARKS

Applicant gratefully acknowledges the withdrawal of the objections to the drawings, specification and rejection under 35 USC 112, second paragraph made in the prior office action. Upon entry of the present Amendment, claims 1, 3-10, 13-15, 17 and 20- 21 will be pending in the application.

Claims 1, 7, 10 and 15 have been amended. Claims 20 and 21 have been added. No new matter has been introduced by these amendments. Reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

### Rejection under 35 U.S.C. §112

Claim 7 was rejected under 35 USC 112, second paragraph.

It is respectfully submitted that the rejection under 35 U.S.C. §112 has now been addressed. Withdrawal of the rejection is respectfully requested.

### Provisional Double Patenting Rejection

Claims 1, 3-7 and 13-14 have been provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over copending Application no. 10/596,388.

Applicants respectfully submit that in view of the possibility that claims in the cited application or the present application will be further amended before allowance, response to this provisional rejection will be deferred until claims in the reference application are allowed, claims in the present application are otherwise allowable, and it is determined whether this provisional rejection becomes an actual rejection.

### Rejection under 35 USC 102

Claims 1, 3-4, 7, 15 and 17 have been rejected under 35 USC 102(e) as being anticipated by Martino '973.

Martino does not disclose the recitation of amended claim 1, inter alia, wherein the analysis cell is pressed against the measuring window to form a gap having a pressure

drop between the measuring window and the analysis cell and the sample being sheared by the pressure drop as it traverses the gap. Further, Martino does not disclose, inter alia, introducing a pressure drop into the gap and shearing the sample stream in the gap with the pressure drop, as recited in amended claim 15.

Claims 3-4 and 7 are dependent upon independent claim 1 and claim 17 is dependent upon independent claim 15. As such each is allowable for the reasons set forth in the response to the rejection of claims 1 and 15. Reconsideration and a notice of allowance is earnestly solicited.

#### Rejection under 35 USC 103

Claims 5-6, 8-9 and 13-14 have been rejected under 35 USC 103(a) as being obvious over Martino'773 in view of well known practices in the art.

Each of claims 5-6, 8-9 and 13-14 are dependent upon claim 1. As such each is allowable for the reasons set forth above in response to the rejection of claim in view of Martino. No practices known in the art overcome the shortcomings of Martino. Reconsideration and allowance is requested.

#### Allowable Subject Matter

Claim 10 was objected to as being dependent upon a rejected base claim, but was indicated that it would be allowable if written in independent form.

By the amendment above, claim 10 has been rewritten in independent form, including all of the limitations of the base claim. Allowance is requested.

#### New Claims

It is respectfully submitted that new claims 20 and 21 are also allowable. Allowance is requested.

### CONCLUSION

No extension of time is believed to be necessary. However, Applicants hereby petition under 37 CFR 1.136 or other applicable rule to have the response period extended the number of months necessary to render the attached communication timely if a petition is required. The Commissioner is hereby authorized to charge to Deposit Account 23-3425 any fees necessary for entry of this amendment and/or extension of time.

For all of the above reasons, it is respectfully submitted that pending claims 1, 3-10, 13-15, 17 and 20-21 are patentable in view of the foregoing remarks. A Notice of Allowance is earnestly solicited. The Examiner is encouraged to contact the undersigned by telephone if direct conversation would be helpful.

Respectfully Submitted,

/MaryEGolota/  
Mary E. Golota  
Registration No. 36,814  
Cantor Colburn LLP  
(248) 524-2300

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CORRESPONDENCE ADDRESS ONLY

BASF CORPORATION  
1609 Biddle Avenue  
Wyandotte, MI 48192  
Customer No. 77224